IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINIAL JURISDICTION

Dated: Nainital the 26th day of July 2006

Criminal Misc. Second Bail Application No. 999 of 2005

Order on the bail application of accused

CRIMINAL SIDE

Padam S/o Fafal
R/o village Karanpur
P.S. Khanpur
District Haridwar …Applicant

Versus

State of Uttaranchal …Opposite party

AND

Criminal Misc. Second Bail Application No. 538 of 2006

Order on the bail application of accused

CRIMINAL SIDE
Satish S/o Tej Ram
R/o village Karanpur
P.S. Kahanpur
District Haridwar ……Applicant

Versus

State of Uttaranchal

….Opposite Party

Arising out of case crime No. 58 /2004
FIR No. 54104 of 2004
U/s 147, 148, 149, 504, 506, 302,/34 I.P.C.
P.S. Khanpur
District Haridwar

Hon'ble J.C.S. Rawat, J.

Heard Sri S.K. Agarwal learned senior advocate and Sri Gopal K. Verma learned counsel for the applicants and learned A.G.A. for the State.

Perused the record. Both the bail application are second bail applications. The earlier bail applications were rejected on merit.

According to the prosecution version, an FIR was lodged on 11.11.2004 alleging therein that Samshad and Babu were going to have the purchases for Eid and after these purchases from Gordhanpur all were coming back to their village. The complainant sat on a tractor alonwith Tahir and Furkan. Whereas, Samshad and pillion rider babu were going to this tractor on their motorcycle. When they reached in front of Gordhanpur school, Accused persons

Satish Padam armed with revolver, Rajkumar armed with country made pistol and Sant Ram, Adesh and Sony were standing with two motorcycles. When Samshad reached there all surrounded him. Then, Padam and Satish fired upon Samshad & Babu, while Rajkumar fired with his C.M.P. Consequently thereupon, Samshad and Babu succumbed to their injuries at the spot.

The learned counsel for the applicants contended that the trial of this case has been proceeding before the Addl.Sessions Judge and the alleged eye-witnesses, namely Maksood, furkan, Tahir and Satvir have been examined before the trial court. They have turned hostile and they have stated before the trial court that they had not seen the incident. It was further contended on behalf of the applicants that the new ground arose after recording of the evidence of Maksood, Furkan, Tahir and Satvir. The true copy of the evidence of these four witnesses has been annexed with the present bail applications.

It was contended by the learned A.G.A. that an application had been moved on behalf of the State alleging therein that there are certain other witnesses of the incident and the evidence of those witness may be recorded. The court below had allowed the application filed by the State. It was contended on behalf of the applicants that the remaining witnesses mentioned in that application had not been indicated in the FIR and their evidence had not been recorded during the course of investigation. It was contended on behalf of the applicants that the evidence of the new witnesses cannot be considered and it is an afterthought. Considering the totality of the facts and circumstances of the case, it is a fit case for bail.

Let the applicants- accused be released on bail on executing a personal bond each and tow sureties each in the like amount to the satisfaction of the magistrate concerned.

(J.C.S. Rawat, J.)

Dated 26.07.2006
LSR